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LAWLESSNESS AND THE REMEDIES THEREFOR.

AT THE last annual meeting of the American Bar Association, held at Cincinnati, Ohio, the president's address was delivered by Mr. James M. Beck, Solicitor General, by appointment of the General Council, on account of the death of Mr. William A. Blount, the late president, just prior thereto. The subject chosen was "The Spirit of Lawlessness." It was an able, eloquent and exhaustive discussion of the causes of lawlessness in the United States, and came up to the high standing of the speaker theretofore established. An imposing array of statistics was presented by the distinguished speaker, showing the rapid increase in criminal prosecutions during recent years, in the federal courts. A learned and philosophical disquisition of the manifold causes culminating in widespread confusion and moral breakdown was presented for the thoughtful consideration of the Association.

A brief synopsis of this address can only cover the main thread of the argument, but it should be read and pondered by every thoughtful American in its entirety.

After premising that it was his purpose to discuss the moral psychology of the present revolt against the spirit of authority, Mr. Beck used as a text the recent utterance of the Pope to the effect that five plagues were affecting humanity, to-wit: unprecedented challenge of authority; hatred between man and man; abnormal aversion to work; excessive thirst for pleasure; and a gross materialism which denied the reality of the spiritual in human life. Each topic was treated with a wealth of illustrative facts fresh in the minds of thoughtful students; and the picture as a whole was gloomy and foreboding. Numerous striking and illuminating sentences punctuated the conclusion of the speaker in his discussion of the shortcomings of the present civilization. The choicest, however, are found in his indictment of ills resulting from the loss of joy in honest labor. As the speaker said:

"Work for work's sake, as the most glorious privilege of human faculties, has gone, both as an ideal and as a potent

spirit. The conception of work as a degrading servitude, to be done with reluctance and a grudging inefficiency, seems to be the ideal of millions of men of all classes and in all countries.

"The spirit of work is of more than sentimental importance. It may be said of it, as Hamlet says of death: 'The readiness is all.' All of us are conscious of the fact that, given a love of work, and the capacity for it seems almost illimitable—as witness Napoleon, with his thousand-man power, or Shakespeare, who in twenty years could write more than twenty masterpieces.

"On the other hand, given an aversion to work, and the less a man does, the less he wants to do, or is seemingly capable of doing.

"The great evil of the world to-day is this aversion to work. As the mechanical era diminished the element of physical exertion in work, we should have supposed that man would have sought expression for his physical faculties in other ways. On the contrary, the whole history of the mechanical era is a persistent struggle for more pay and less work, and to-day it has culminated in world-wide ruin; for there is not a nation in civilization which is not now in the throes of economic distress, and many of them are on the verge of ruin. In my judgment, the economic catastrophe of 1921 is far greater than the politico-military catastrophe of 1914. . . .

"The great indictment, however, of the present age of mechanical power is that it has largely destroyed the spirit of work. The great enigma which it propounds to us, and which, like the riddle of the Sphinx, we will solve or be destroyed, is this:

"Has the increase in the potential of human power through thermodynamics, been accompanied by a corresponding increase in the potential of human character?"

Confessing that he might appear to be unduly pessimistic, and that he had offered no remedy, he concluded, in part:

"There are many palliatives for the evils which I have discussed. To rekindle in men the love of work for work's sake and the spirit of discipline, which the lost sense of human solidarity once inspired, would do much to solve the problem, for work is the greatest moral force in the world. But I must frankly add that I have neither the time nor the qualifications to discuss the solution of this grave problem."

Other notable addresses were delivered on this occasion by distinguished speakers on kindred topics, to-wit: Hon. Harry M. Daugherty, Attorney General, on "Respect for Law"; Mr. Luther Z. Rosser, on "The Illegal Enforcement of Criminal Law"; Mr. William D. Guthrie, on "The Duty of the Bar in the Selection of Judges"; and Judge Marcus Kavanaugh, on "The Adjustment of Penalties". Chief Justice William H. Taft, Mr. John W. Davis, former ambassador to England, Mr. Elihu Root, and other distinguished jurists and lawyers, were present and took part in the various sections of the Association.

Near the close of the meeting, a motion was unanimously adopted authorizing the appointment of a special committee of five members to take into consideration the many addresses on lawlessness and report the sense of the Association thereon to its next meeting. No more important or timely duty was ever assigned any committee by the American Bar Association. While the writer was the author of the resolution, and has since been named Chairman of the committee, with able associates composed of Judge Marcus Kavanaugh, of Chicago; Ex-Governor Chas. S. Whitman, of New York; Mr. Chas. W. Farnham, of St. Paul; and Mr. Wade H. Ellis, of Washington, D. C.; and has no authority to bind the committee, he is exceedingly anxious to have the co-operation of the Bench and Bar of the country; and for that reason, he embraces the opportunity to state briefly some preliminary thoughts and suggestions as to the manner in which the subject ought to be studied and discussed during the next few months.

The problem is intensely practical in its nature, and is necessarily confined to the United States. While many of the causes for the admittedly widespread unrest and increase in the volume of crime in all the States can be traced to their sources in Europe and much of it is confessedly due to the reaction following the world war and the prohibition amendment, there are other causes nearer at home which should be closely studied. The subject naturally divides itself into a three-fold aspect:

First: The exact facts as to the extent of lawlessness in the United States, which necessarily involves a comparison with lawlessness in other countries, and especially in England, France, Germany, etc.

Second: Causes of the lawlessness now prevalent in this and other countries, which include the reasons assigned by the speakers, as well as others.

Third: The suggestion of remedies to mitigate, and cure, if possible, these lamentable ills which afflict all governments at this time, and especially the United States, which will involve a consideration of the present status of our law courts, State and National, and especially those pertaining to crimes and criminal procedure, and a comparison with those of England, France and other countries.

The political, financial, industrial and social revolutions which have occurred in Europe following the world war have materially lessened the restraining influences of law in this country as well as in Europe, and as noted by the speakers, all classes of crime have increased here as well as there. No one disputes this fact. There are two ways of analyzing these unpleasant concomitants of all political and social revolutions, however, as well as appraising the effects of such revolutions. One is the view of the pessimist, and the other that of the optimist. To the first class belongs that group of writers and thinkers who have made up their minds that all things, human and divine, (if there be anything divine) are past mending. They stand for the present order, and are unalterably fixed in the opinion that all free governments are doomed to failure. They believe that humanity is beyond amending; that our civilization is already doomed; and hence nothing can be done to avert its destruction. The pessimist has no faith, creed or vision; is usually a worshipper of the past; and like most of his tribe refuses to be happy even among his kith and kin. The pessimist never won a war, planted a colony, or erected a self-governing state. In politics he has a holy horror of the people—the *rabble*, as he glibly calls them. The optimist, on the contrary, like charity, believeth all things, hopeth all things, rejoices in truth, and is not afraid to make an experiment when he is satisfied an evil exists. The optimist defies definition, is a man of supreme faith, and verily belives no situation is so bad that it might not be worse, and hence can be ameliorated. He is constructive and not destructive. But for the optimists, the Germans would have won the war. In poli-

tics, he is a believer in free government, is not afraid to take his chance with the majority, especially in a country where freedom of debate is safeguarded.

There is no disputing the fact that the downfall of the Russian Empire, and the spread of bolshevism in Russia, followed by the overthrow of the Hohenzollern and Hapsburg dynasties, and the erection of republican governments in Central Europe, have wrought a political revolution more far-reaching in its consequences than anything that has occurred since the French Revolution and the Napoleonic wars. To the thoughtful student of history, especially in this country and England, the aftermath of the war in Europe is the most encouraging sign of progress and social and political betterment which could have occurred. The fact that twenty republics are now in process of formation with every assurance of ultimate success, upon the ruins of the worst form of militaristic despotisms, which were thought to be hopeless of reforming, and had become a menace to the liberties of all free governments, should not be rational grounds for incurable pessimism in a patriotic American. No higher tribute was ever paid to our republican institutions than the adoption of our form of government by these European nations. These new nations are entitled to the hearty sympathy and active co-operation of our great republic; and will in time gain them; and our faith, respect and confidence in our own institutions will thereby be increased. The part played by our nation in the world war is, in the opinion of the writer, largely responsible for this momentous result. The leadership of our government in this movement made it possible for the establishment of these free governments, and we as a nation are morally obligated to give every support to them consistent with our national welfare and recognized policy of avoiding entangling alliances with governments founded upon totally different theories.

It is only too true that there has been an alarming increase in criminal prosecutions during the last few years, the figures in the federal courts showing the number in 1912 to have been 9503, as against over 70,000 in 1921, the number for the violation of the prohibition laws being 34,216. On July 1, 1921, the

total number of criminal cases pending was 57,112, of which only 10,365 were for violations of the prohibition laws. During this series of years, the world war was the disturbing factor, and many millions of the youth were taken from their homes in this country, every line of business was disturbed, labor was made discontented by exorbitantly high wages, the professional and other classes were made the victims of the profiteers, many were out of jobs, living costs were unduly high, and other causes of discontent were piling up mountain high. During this period there was also a presidential election, and a continuous campaign by all the faddists, bolshevists, I. W. W.'s, communists, socialists, *et id omne genus*, with very little organized educational opposition to counteract these false teachers and their destructive doctrines.

The placid character of the people and their abiding faith in their governments, State and National, have never been more thoroughly exemplified than during this trying ordeal. The magnificent response made by the nation to the call to arms to protect the liberties of France and our other allies, and the strength displayed by our free governments with others during the war, should not be overlooked or forgotten. The graceful and uncomplaining manner in which the American people accepted the results of the presidential election, notwithstanding the apparent radical changes which were thought would follow in the foreign policy of the government, is without parallel, and demonstrated the stability of the government as well as the efficiency of popular elections,—“a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided;” and its corollary which has become a second nature: “absolute acquiescence in the decisions of the majority, the vital principle of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism.”

A considerable volume of these criminal prosecutions was due to violations of the Selective Service Act, and other unusual conditions growing out of the world war; and it should not be forgotten that there has been a very considerable increase in the number of criminal offenses as the result of recent acts of Con-

gress, it having been uniformly held that there are no common law crimes in the federal courts. In view of these facts, and remembering that our courts, state and national, have been allowed to act as units, and little or no attention has been paid to increasing their efficiency for many decades, and many of them have had congested dockets for years, although the judges were faithful and diligent in the performance of their duties, it is remarkable that conditions have not grown worse.

In all conscience, the evils resulting from the law's delays, and the maudlin sentiment that has been allowed to prevail against inflicting adequate punishment, are deplorable enough, without attempting to exaggerate the facts. The figures showing comparison in character and volume of crime in the United States, and England, France, Germany, and other countries, have been compiled by Mr. Raymond B. Fosdick, author of "European Police Systems" and "American Police Systems", published by The Century Company, which has kindly consented to the use of such parts thereof as may be thought desirable by the writer. While not altogether complimentary to our nation as law abiding citizens, a too hasty conclusion should not be drawn from them. The numerous tables found in these volumes are well worth careful study, but space forbids doing more than making a few comparisons as to certain grades of crimes. Mr. Fosdick says:

"As to the fact of our excessive criminality, the statistics furnish startling evidence. London, in 1916, with a population of seven millions and a quarter, had nine premeditated murders. Chicago, one third the size of London, in the same period had 105, nearly twelve times London's total. In the year 1916, indeed—and it was not an exceptional year—Chicago with its 2,500,000 had twenty more murders than the whole of England and Wales put together with their 38,000,000 people. The Chicago murders during this year total one more than London had during the five year period from 1910 to 1914, inclusive. In 1917, Chicago had ten more murders than the whole of England and Wales, and four more murders than all England, Wales and Scotland. In 1918, Chicago had fourteen more murders than England and Wales. In 1919, the number of murders in Chicago was almost exactly six times the number committed in London. . . .

"But Chicago is not exceptional. Other American cities suffer equally from comparison with crime conditions abroad. New York City in 1916 had exactly six times the number of homicides (murder and manslaughter) that London had for the same year, and only ten less homicides than all of England and Wales. In 1917, New York had six times more homicides than London, and exceeded the total homicides of England and Wales by 56. In 1918, New York again had six times more homicides than London, and exceeded the total homicides of England and Wales by 67. This contrast cannot be attributed to the peculiar conditions in London induced by the war. In each of the years from 1914 to 1918 inclusive New York had more homicides than occurred in London during any three year period previous to the outbreak of the war in 1914."

Statistics concerning burglary, robbery, and thefts of automobiles, are equally, if not more discreditable, to our nation. There are many mitigating circumstances which should be taken into consideration before passing judgment upon our country and branding it as a nation wholly given over to crime beyond redemption, as is pointed out by Mr. Fosdick in his able, painstaking, and exhaustive treatises. These two volumes are the result of a personal investigation made by the author with the aid of a corps of trustworthy assistants and bear every indication of fairness and discriminating judgment, and are written in an attractive style. While not agreeing with the author in all of his conclusions, and especially all that he says about what he denominates unenforceable laws, it is not too much to say that both of these volumes ought to be in the library of every judge, prosecuting attorney, commissioner of police, and other officials whose duty it is to ferret out crime, and aid in the enforcement of the laws against criminals in this country, as well as governors and legislators. The contrasts between the efficiency of the Metropolitan Police Force of London, the Detective Bureau of Paris, and the Carabinieri in Rome, and those in America, leads the author to conclude that ours is the most pronounced failure in our unhappy municipal history. He is of the decided opinion, however, that the Metropolitan Police Force of London, with all of its splendid efficiency, would be overwhelmed in New York; and that the Brigade de Sureté of Paris,

with all of its ingenuity and mechanical equipment, would fall far below the level of its present achievement if it were confronted with the situation in Chicago. This he charges to the heterogeneity of the population in these cities. Mr. Fosdick says:

"With rare exceptions, the populations of European cities are homogeneous. The population of American cities is heterogeneous to an extent almost without parallel. Only 3% of London's population is foreign-born. Paris has 6%, Berlin 2.9%, Vienna approximately one per cent. In America, to use only a few illustrations at random,—New York's foreign-born population is 41%, Chicago and Boston 36% each, Cleveland and Providence 34% each, Detroit 33%. Where London has 211,000 foreign born, Paris 170,000, and Berlin 60,000, New York has 1,944,357, of which 1,563,394 are of non-English speaking peoples, while Chicago has 783,428, of which 653,377 are from non-English speaking countries.

"This contrast can be emphasized in another way. London has 14,000 Italians among her foreign-born. Paris has 26,000. New York has 340,000; Chicago has 45,000. London has 45,000 foreign-born Russians. Paris 18,000. New York has 485,000; Chicago 121,000. Where Paris has 7,000 Austro-Hungarians, New York has 267,000. Where London has 27,000 Poles, Chicago has 126,000. London's 42,000 foreign-born Germans must be contrasted with New York's 280,000 and with Chicago's 185,000. New York's Italian-born population is greater than the combined populations of Bologne and Venice. She has more German-born residents than has Bremen, Konigsberg, Aix la Chapelle, Posen, Kiel, or Danzig. Only three cities in old Austria-Hungary—Vienna, Budapest and Prague — have larger Austro-Hungarian population than New York, while in Chicago the foreign-born Austro-Hungarians outnumber the population of Brunn, Cracow, or Gratz. In only five Russian cities—Petrograd, Moscow, Odessa, Warsaw, and Kiev—can a Russian population be found greater than that of New York.

"But this is not the whole contrast. The forbears of London's present population for generations back were Englishmen, bred to English customs and traditions, just as the forefathers of modern Parisians were Frenchmen, born to French institutions and ideals. In New York, Chicago, and other large cities in the United States, there are hun-

dreds of thousands of residents whose mothers or fathers or both were born abroad. If we add this class to the foreign-born population, of which we have been speaking, to form what may be called the foreign stock element, we find that it comprises 80% of New York's population, and that of the total number, amounting to 3,769,803, nearly three fourths came of non-English speaking people. Similarly, this foreign-stock element constitutes the majority of the population in the nineteen largest cities in the United States. In other words, the native white population of native parentage amounts to less than one-fifth of the total population of New York and less than one fourth of the populations of Chicago, Boston, Cleveland, Detroit, and Milwaukee; while in cities like Fall River, Massachusetts, it constitutes little more than ten per cent. In only fourteen of the fifty largest cities in America does the native parentage population equal fifty per cent of the total.

"Again, the contrast can be emphasized in terms not only of race but of color. In London and other cities of Great Britain the negro population is so negligible that the census statistics make no mention of it. Only rarely does one see negroes on the streets and a 'color problem' does not exist. In America, in consequence of the great number of negro inhabitants, this problem has assumed startling proportions. . . .

"The consequences of this mixture of race and color are far-reaching, particularly in their effect on such functions as policing. Homogeneity simplifies the task of government. Long-established traditions of order and standards of public conduct, well-understood customs and practices which smooth the rough edges of personal contact, a definite racial temperament and a fixed set of group habits by which conflicting interests are more readily comprehended and adjusted—in short, the social solidarity and cohesiveness which come only from a common language and a common heritage—all these factors, so interwoven in French and English community life, and so essential in facilitating the maintenance of law, are utterly unknown in many of the towns and cities of the United States. . . .

"It is this complex problem of nationality that the police are called upon to grapple with. They must enforce the same laws among a score of races and maintain a standard of conduct in a population coming from radically different environments."

Space forbids, as well as the vastness of the subjects out-

lined, to consider fully the causes of lawlessness, but suffice it to say that the arraignment made by Mr. Beck and the other speakers referred to, has left no class of business or society out of the indictment, including insurrection against the political state by labor in England and elsewhere; graft in politics in our country; dishonesty in business, justifying anti-monopoly statutes, including the Sherman anti-trust law and the Lever bill against profiteering; violations of the fundamentals of art, literature and music, and social intercourse. As, Mr. Beck says: "The very foundations of the great and primitive institutions of mankind, like the family, the church, and the state, have been shaken. . . . The causes of the grave symptoms are not ephemeral or superficial, but must have their origin in some deep-seated and world-wide change in human society. If there be a remedy, we must diagnose this malady of the human soul."

For the purposes of this paper, it is not necessary to attempt any abstruse treatise involving the existence of a God, the necessity of preserving the integrity of the church, the state, and the family; but are we not justified in concluding that most of these evils are the direct result of false teachings of German professors under the control and dictation of a conscienceless Prussian autocracy, which was idolized by the balance of the world until shortly before the outbreak of the war? The fact that many of the so-called thinkers and writers who were educated in an atmosphere of German materialism are to-day challenging everything human and divine except the multiplication table ought not to unduly alarm the plain American who is conversant with his country's true history, and thoroughly grounded in the fundamental principles of his government. If there is one nation on earth that should not fear the violent assaults of the enemies of the church, the state and the family, and the other constructive forces which have builded our nation, it is ours. What, then, can and should be done to stem the tide of crime, doubt and pessimism which many prophets of evil claim to portend our certain and inevitable destruction?

To the thoughtful student of history, the fact that the evils are known and recognized by all is the first and strongest evidence that they will be corrected and mastered. More books have been written on these and cognate subjects during the last dec-

ade than at any time probably in a half century. Our nation has made little, if any, organized effort to solve the problem of lawlessness, and we have permitted our courts to become so backward and inefficient in the administration of the law against criminals in many sections as to justify the stinging rebuke administered by President Taft, in 1909: "It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud, which is here greatly in excess of that in European countries is due largely to the failure of the law and its administration to bring criminals to justice." Is not this a correct diagnosis of the malady?

The question then naturally arises: How can the law and its due and effective enforcement be accomplished? The only satisfactory and scientific manner in which these matters can be treated is by the historical method.

It is worthy of notice that a vast amount of literature already exists in England and in this country as the result of the agitation for law reform and especially is this true as to criminal law and procedure. It is not all mere theory, as one might imagine, but has dealt with the subjects in a concrete way, and the results have been beneficent and far-reaching in both countries.

For practical purposes, it is only necessary to review the history of England and this country since the latter portion of the eighteenth century. When Blackstone wrote his celebrated Commentaries in 1765, there were over two hundred felonies on the statute books of England, and most of them were capital offenses. Among these were the following: To break down the mound of a fishpond whereby any fish shall escape; or to cut down a cherry tree in an orchard. It was indeed a bloody code. In addition to this, the laws of evidence were crude and almost primitive. A free and independent judiciary was slowly developing, beginning with the revolution of 1688; and technicalities in criminal prosecutions were useful to protect the individual from gross abuse of executive power. Trial by jury, the writ of habeas corpus, the right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and laws against excessive bail and fines, and cruel

and unusual punishment, were among the fundamental rights of every freeman. Laws against requiring a man to testify against himself, against general warrants, and freedom from arrest except under conditions safeguarding those rights, established that peculiar and highly developed system of personal liberty among the English, quite different from other nations in Europe, where the Roman, or Civil, law prevailed. These laws were the result of centuries of growth, and are parts of what is known as the Common Law. They are the frame-work of the unwritten constitution of England, and are bone of their bone, and flesh of their flesh. This Common Law of England has been extended over almost one-half of the habitable globe, including the United States with the exception of Louisiana. The Roman or Civil Law is the basis of the laws of the European nations, and extends over practically the other half of the civilized world, but it is devoid of these common law characteristics, although in many respects more evenly developed and better adapted to commerce and other relations of life. These two systems of jurisprudence are capable of being blended; and in fact England and the United States have borrowed unsparingly from the Civil Law in matters pertaining to domestic relations, equity jurisprudence, private corporations, and commercial law. The Anglo-Saxon has ever been a stickler for personal liberty, and his boast has ever been that his house is his castle, and his hat his crown. Resistance to tyranny has ever characterized him.

The progress of reform in criminal laws and their method of enforcement, or criminal procedure, was slow, owing to the proverbial conservatism of England. Jeremy Bentham, the first great reformer, was a student of Blackstone at Oxford University, and devoted his life and fortune to the agitation for reforming these laws.

The United States, while inheriting the common law of England, as before stated, made many improvements in the laws pertaining to crimes and criminal procedure; and until the middle of the nineteenth century was far in advance of England. Bentham found many disciples in this country; and England was during the first portion of the Victorian reign in a most

backward and deplorable condition, especially as to lawlessness. Lord Bowen gives an interesting and instructive account of these matters in his admirable essay entitled "A Survey of Fifty Years of Progress", published in 1887. He gives a history of the various improvements made in a judicial system of England, and points out the many evils that were removed in all of the courts, and the vast strides made in the enforcement of laws against the criminal classes. The procedure of the common law had become antiquated, technical and obscure. The business of the nation had outgrown its laws, and especially was this true as to the laws governing evidence and procedure generally. The many efforts by Royal Commissions and otherwise to amend the laws pertaining to crimes first begun by Sir Robert Peel in 1826, and partly successful in the six criminal law consolidation and amendments acts, were passed as late as 1861. Technicalities in indictments reached the height of absurdity in an indictment drawn by Lord Bowen, and settled in consultation with the Lord Chancellor and Lord Justice Holker, which, when engrossed on parchment, was ninety yards in length. Much consolatory food for thought will be found in his account of the lawlessness in England in 1837. Says Lord Bowen:

"It requires an effort of the imagination to realize the extent to which lawlessness then reigned in the suburbs of our large towns and in our country places. In the smaller towns and villages the constable was chosen from the humblest order of tradesmen, farmers, or even day laborers. He was frequently the master of the ale house or the village shop, who for a trifling remuneration had accepted the office, or had it forced upon him in rotation; and the guardians of the public peace could not always read or write. The last thing such officials wished was to incur the trouble, the danger, or the odium of pursuing or arresting a culprit. Over a considerable portion of England, property was less secure than in any great European country, excepting only Italy and Spain. Commercial travelers were loth to travel after dark. One of them, who for twenty years had made the round of the southeastern counties from Norfolk to Devonshire, states in the year 1838 that, although perfect security prevailed within five or six miles of the metropolis, it would be imprudent beyond that distance to venture out after nightfall; and that if he could

travel where there were no police with the same freedom as he could within the police district, he should be able on his rounds to save perhaps five days in forty. Property was safe neither on the river, nor on the canal, nor upon the turnpike road. Commercial houses came forward in numbers to complain that whole lines of canal were absolutely unprotected, that bales were opened, and their boxes and cases broken or abstracted. Along different lines of canal receivers of stolen goods set up regular establishments, and entire families in the neighborhood lived on the receipt of the plunder. Silk, wine, spirits, flour, malt, groceries of every description disappeared wholesale. In the Enfield district, upwards of thirty gentlemen in the year 1838, during a period of twelve months, had their stables opened and large quantities of property carried away. Footpads lurked in the vicinity of the great manufacturing centers of the north; robbery with violence, murder itself, went often unpunished. Gangs from towns drifted into the country for purposes of crime; the towns, in their turn, suffered from the bad characters who took up their residence in the country, with no apparent anxiety to avoid the presence of the parish constable. Vagrants perambulated the country, living on their wits, and even the cottagers' dwellings were rifled while the inmates were working in the fields. The farmer who kept no private watchman, or who did not live within the radius of an association, was liable to lose great quantities of agricultural products. If he lived near a town like Leeds, he hesitated before returning home after dark from the market or the fair, unless he was in the company of friends. The local constable was sometimes too stupid, sometimes too busy, often too timid, to attend to information given him. It was due to the same cause that wreckers at this date haunted the dangerous and desolated places on the coast. Rural crime, in fact, went unprevented, undetected, unprosecuted. The returns of prosecutions and convictions, to which the statesman and philanthropist in our times have recourse as affording some clue to the prevalence or absence of crime told absolutely nothing, for they bore no relation at all to the good conduct of the locality. Men abstained from prosecuting when there was no certainty of redress, and the absence of criminal statistics resulted frequently from the undisturbed immunity of the offenders. . . .

"In the year 1839, there were upwards of five hundred voluntary associations for promoting the apprehension and pros-

ecution of felons,—for performing, in fact, by individuals the first duty of a civilized government. Among the rules of some of them were rules for mutual insurance by payment of part of the loss occasioned by depredations. In some of the farmers' associations members were bound by their code, in case of horse stealing, to mount and join themselves in pursuit of the thief upon an alarm given."

Much more equally discreditable could be extracted from this paper, especially about the treatment of prisoners, such as the "hulks", and transportation of convicts to Australia, which did not cease until after 1867. In conclusion, Lord Bowen says:

"There is and can be no such thing as finality about the administration of the law. It changes, it must change, it ought to change, with the broadening wants and requirements of a growing country, and with the gradual illumination of the public conscience."

No such dark and gloomy chapter can be written about our own country.

As stated by John Fiske, the United States has been a theatre for "Sundry sturdy European ideas, transplanted into this western soil (which) have triumphed over all competitors and thriven so mightily as to react upon all parts of the Old World, some more, some less, and thus to modify the whole course of civilization. This is the deepest significance of the discovery of America; and a due appreciation of it gives to our history from its earliest stages an epic grandeur, as the successive situations unfold themselves and events with unmistakable emphasis record their moral. In the conflict of Titans that absorbed the energies of the sixteenth century, the question whether it should be the world of Calderon or the world of Shakespeare that was to gain indefinite power of future expansion was a question of incalculable importance to mankind." The vast improvements made in law reform are among these notable achievements.

But it cannot be said that present conditions are satisfactory, especially in the cities. It must be admitted that England in the last quarter century has far outstripped us in reform legislation, and has achieved notable success in the prevention of crime, as well as in the speedy and certain enforcement of her criminal

laws. If England has accomplished this wonderful reform, why may not the United States? It is worthy of remark that England has done so without destroying one of the fundamental rights of her citizenry as guaranteed by the ancient common law. It is pointed out many times by Mr. Fosdick in his splendid books that the European police systems are constructed on a military footing, while that of England and the United States are not. England has, therefore, it is submitted, led the way for our nation to suppress lawlessness, lessen crime, and adequately punish convicts. Space forbids to adequately describe the many steps which were taken in England. These reforms were effected in a general way along three lines: *First*, by providing an adequate judiciary, by consolidating the courts, and providing a sufficient number of judges to do the work—giving them adequate salaries, with a guaranty of life tenure of office, and a pension after a certain number of years of service. *Second*, reforming the penal code, abolishing technicalities in indictments and criminal procedure, thereby making a speedy trial possible, giving an absolutely fair trial, with certainty of adequate and swift punishment in all cases of guilt. *Third*, by a perfect police system for cities, and a constabulary for the country districts under the control of the Secretary of Home Affairs, with certain exceptions. The improvement of the penal code has been gradual, and other reforms noted have been brought with a view of eradicating recognized abuses, which is the only safe way to accomplish lasting results. The most notable Acts of Parliament which were enacted are as follows:

Acts of 1873, 1875, and 1883, creating a Supreme Court of Judicature, abolishing the old system of courts, and with various amendments brushing aside all differences between law and equity, and giving the courts power to make rules for the conduct of business, thereby abolishing all technicalities in pleadings, and revolutionizing the laws of evidence; acts limiting the number of capital offenses, and graduating secondary punishments; various acts concerning crimes, and criminal procedure, including those of 1898, allowing prisoners to testify in their own behalf; act of 1907, establishing a Court of Criminal Appeals, but without the power to grant a new trial; and the in-

dictment of 1915, under which the language of all indictments has been reduced to the simplest form and to the smallest compass.

An indictment for murder, given by Mr. John W. Davis, in his scholarly address under the practice now in force, is as follows:

"The King v. Albert John Brown.

"Albert John Brown is charged with the following offense:

"Statement of offense: murder.

"Particulars of offense: Albert John Brown on the 19th day of October, 1920, in the county of Essex, murdered Caroline Smith."

The results accomplished by the English during this period have won the admiration of all judicious critics, have shed new lustre upon the common law system, and justify the boast that no courts in the world are equal to hers in their fairness, honesty, speed, and absolute justice to rich and poor alike. This tribute is justly due to England, and it is this genius for law that has enabled her to become the mistress of the world on land as well as on seas. What England has done the United States can and will do. Already our great Chief Justice has championed a bill or bills for the relief of the Federal Courts, to aid Attorney General Daugherty and the Congress, who have had the bills under consideration for some months. These bills provide for an increase of eighteen to twenty-two district judges, and confer certain power upon the Chief Justice to call conferences of the senior circuit judges and district judges, have general supervision of the business of the courts, with power to assign district judges when necessary to dispatch business, and keep fully informed as to the amount and character of litigation pending in the courts. These acts are the result of an investigation made by a voluntary commission of the federal judges, acting upon the request of the Attorney General. They are in the right direction, and one of them will doubtless be passed during the present session of Congress. Other legislation will also be necessary to add to this along the plan adopted by England, especially abolishing technicalities, and strengthening the constabulary.

Of course it will be necessary for the States to effect many similar reforms in the criminal laws, and criminal procedure including abolishing technicalities in indictments and other procedure, as well as strengthening the judiciary and the constabulary. But the greatest of all tasks will be preventing crime and enforcing laws against criminals in our cities. Now that fifty-two per cent of our population is in the cities, the government of these becomes at once our greatest task and most imperative duty.

The greatest obstacle in the way of speedy reform in our States is the tendency to look to Congress and Washington for relief. Many good citizens have become despondent over the failure of our leaders in both parties to give adequate thought and consideration to remedial legislation by the States. When one speaks of reform coming from the State he is apt to be reminded that the doctrine of state's rights is dead. This is a fatal error. Broadly speaking, the only issue settled by the war of 1861-1865 was that the States had no right to secede. Now that taxes, city, county, state and national, are becoming burdensome, it behooves the citizen to take a more active interest in public affairs, and study all the problems pertaining to each, and demand that more intelligent and trustworthy officials be elected, and especially that the laws be simplified, better qualified judges be elected, their tenure of office be made certain, their salaries adequate, and above all that every State shall have a real, efficient department of justice, with a unified judiciary in thorough co-operation with a State constabulary trained efficiently to ferret out crime and act with promptitude in the arrest of all criminals. The problem of the cities must be solved by the States. Considerable progress has been made in recent years in this direction, and in time all the difficulties will yield to intelligent treatment as they have in Europe and in England. When the best brains of America take up statesmanship again, as was the case at the beginning of our government, then reforms will become easier. Our people must realize the urgent need of intelligent leadership in the government of the city, county, state and nation alike.

Every consideration demands that we cease the chase after

the almighty dollar long enough to solve these problems, without which neither the blessings of life, liberty and wealth, indispensably necessary to happiness, are secure. The study of law reform in England during the last century is most helpful and instructive, and shows that while it takes time and patience to crush out lawlessness, it can be done. English reformers have profited by our experience, and we should not hesitate longer to profit by the tremendously great improvements accomplished by that country at this crisis in our nation's existence. The solution of these problems, when properly undertaken, will require constructive talent of the highest character to be found in the Bench and Bar of America, and when accomplished, as it will and must be done, will as it ever has been be the application of certain simple and elementary ideas too often overlooked.

In the last analysis, law and order are in the hands of the people, and when the forces of evil are met by the combined forces which stand for righteousness, the home, the school, the state and the church, the result will be in favor of good government.

There must be a speedy return to the spirit of co-operation of all classes for the benefit of society as a whole, with greater emphasis upon the representative idea, and the destruction of the myriad selfish organizations which have resulted in corrupt lobbies now haunting the national and state capitals, demoralizing the Congress and the legislatures, and impeding the administration of law throughout the country.

In the meantime, we should not lose faith in our government and humanity in general, but take courage from what Garfield said: "God reigns, and the government at Washington still survives."

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